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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

DHARMENDRA PRASAD,

Defendant and Appellant.

E071229

(Super.Ct.No. RIF124986)

OPINION

APPEAL from the Superior Court of Riverside County. John D. Molloy, Judge.
Affirmed.

Arielle Bases, under appointment by the Court of Appeal, for Defendant and
Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant, Dharmendra Prasad, filed a petition to seal and destroy
his arrest records pursuant to Penal Code section 851.8, which the court denied. After

defendant filed two notices of appeal and an attorney from Appellate Defenders, Inc. filed an amended notice of appeal, this court appointed counsel to represent defendant.

Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738, setting forth a statement of the case and identifying three potentially arguable issues: (1) whether defendant's plea was knowingly and voluntarily made;¹ (2) whether defendant received effective assistance of counsel where counsel failed to inform defendant of the immigration consequences of the plea;² and (3) whether the trial court erred when it denied defendant's Penal Code section 851.8 petition to seal his arrest records. We affirm.

I. PROCEDURAL BACKGROUND

The People charged defendant by felony complaint with felony possession of cocaine (count 1; Health & Saf. Code, § 11350, subd. (a)) and misdemeanor driving a vehicle with a suspended license (count 2; Veh. Code, § 14601, subd. (a)). The People additionally alleged defendant had suffered a prior prison term. (Pen. Code, § 667.5, subd. (b).)

On December 15, 2005, defendant pled guilty to possession of cocaine (count 1; Health & Saf. Code, § 11350, subd. (a)) and admitted suffering a prior prison term (Pen.

¹ Counsel does not specify to which plea counsel refers, defendant's guilty plea to possession of cocaine or his plea agreement with respect to his subsequent admission of a violation of probation.

² Again, counsel does not specify which plea.

Code, § 667.5, subd. (b)). As part of defendant's plea agreement, defendant initialed a provision reading: "If I am not a citizen of the United States, I understand that this conviction may have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States." Defendant signed the agreement indicating: "I have read and understand this entire document." Defense counsel signed the agreement reflecting: "I am satisfied that . . . the defendant has had an adequate opportunity to discuss his/her case with me . . . and . . . the defendant understands the consequences of his/her guilty plea." Prior to taking defendant's plea, the court asked him if he went over the plea agreement with his attorney. Defendant responded that he had. Pursuant to the plea agreement, the court placed defendant on 36 months of formal probation.

At a hearing on October 12, 2007, defense counsel indicated defendant had just been convicted and sentenced to two years in another matter, which constituted a violation of this probation in the instant case.³ Defense counsel stated the People had asked for a 16-month sentence on the violation of probation to be served concurrently with the two years imposed in the other matter. Defense counsel noted: "I'm not an immigration attorney by any stretch of the imagination—[defendant] has expressed to me that he believes that by sentencing him on this case alone to a year or more, would end in

³ A prior violation of probation had been filed on February 20, 2007. Defendant has also apparently garnered two new misdemeanor charges of driving with a suspended license (Veh. Code, § 14601), which were dismissed.

deportation, which would make him, obviously, excluded from coming back to the United States”

Defense counsel requested instead a 180-day jail sentence and termination of probation because defendant believed the prison sentence “would be a problem with immigration.” The People agreed with the sentence requested by defense counsel. After signing a plea form and indicating in court that he understood it,⁴ defendant admitted violating the conditions of his probation. The court reinstated defendant’s probation with an additional term that he serve 180 days in jail, but awarded him credit for time served and terminated his probation.

On February 27, 2018, the court granted defendant’s request that the court dismiss his conviction pursuant to Penal Code section 1203.4. On July 13, 2018, defendant filed a petition to seal and destroy his arrest records pursuant to Penal Code section 851.8. The court denied the petition.

II. DISCUSSION

We offered defendant an opportunity to file a personal supplemental brief, which he has not done. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the record for potential error and find no arguable issues.

⁴ The plea form for the violation of probation is not a part of the record on appeal.

III. DISPOSITION

The judgment is affirmed.

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McKINSTER
Acting P. J.

We concur:

MILLER
J.

RAPHAEL
J.